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In The
Supreme Court of the United States

October Term 1983

No.

CAMERON K. WEHRINGER,

Petitioner,

-against-

KATHY GARDNER,

Respondent.

*On Writ of Certiorari to the Supreme Court
of the State of New Hampshire*

PETITION FOR CERTIORARI

CAMERON K. WEHRINGER

Attorney for Petitioner

160 East 56th Street

New York, New York 10022

(212) 888-7050

Questions Presented

1. Is imprisonment for private debt proper for a court to order?
2. May a court use contempt proceedings to enforce payment of a private debt?
3. Is it Due Process to send a notice of hearing to an incorrect address so that it arrives on a post-hearing date?
4. Is it Due Process to fail to send the decision in the State's highest court (the reason for this Writ) to the appellant's attorney?
5. May a court ignore a stated prior court engagement in a sovereign sister state in scheduling a court hearing date?

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In The
SUPREME COURT OF THE UNITED STATES
October Term, 1983

No.

CAMERON K. WEHRINGER,

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Respondent.

On Writ of Certiorari to the Supreme
Court of the State of New Hampshire

PETITION FOR CERTIORARI

Citation to Opinion Below

The Supreme Court of New Hampshire
(that state's highest court) affirmed with-
out opinion. The case is not to be re-
ported (1a). (All references to pages in

Appendix are given by number followed by the letter "a".)

The Superior Court, Cheshire County, New Hampshire (the court below), without reason for its opinion, made its order. That too is not to be reported (40a-41a).

Jurisdiction

The determination of the Supreme Court of New Hampshire apparently was made November 30, 1983. (The word "apparently" is used deliberately as Petitioner, as his own attorney [pro se] before that Supreme Court, at no time has been sent a copy of that court's decision, Petitioner learning of the decision second-hand.

Petitioner asks for the issuance of a Writ of Certiorari as Petitioner did not receive the basic elements of Due Process pursuant to Amendments V and XIV of our

United States Constitution (50a and 51a), was deprived of Freedom of Speech pursuant to Amendment I of our Constitution (49a), and New Hampshire failed to give Full Faith & Credit under Article IV of our Constitution (49a) to a sister sovereign State's (New York's) prior-made court scheduling on Petitioner, and so did not adjourn the later-scheduled New Hampshire court hearing set for the same date. Further, by ordering imprisonment for private debt New Hampshire, by its courts, violated Amendment VIII of our Constitution (50a).

Statement of the Case

The lower court (Superior Court, Cheshire County, New Hampshire) without opinion declared Petitioner was to pay Respondent a sum of money by a stated time (12a). Petitioner noted he was

unable to pay said sum (17a-18a at ¶B, 18a).

The lower court then scheduled a hearing for May 17, 1983 (21a-22a). Petitioner, appearing at this May hearing, testified under oath and was cross-examined. Petitioner swore he did not then have money to pay. There was neither denial nor refutation of this. The court then put over the matter until August 31, 1983 (23a-24a). A week prior thereto, Petitioner noted there had been no change in his financial condition (25a-27a, ¶4, 26a) and requested an adjournment. The lower court ordered a hearing for September 26, 1983 (33a).

From New York, Petitioner advised the New Hampshire court that the September 26, 1983 date was not possible; not only had his means of transportation (his automobile)

been stolen, but his funds did not enable him to rent a car; but, more vitally, Petitioner had a prior-scheduled court engagement in New York (where he was to sit as though a Judge) (28a-31a, ¶4, 29a).

Nevertheless, ignoring this prior court engagement in New York, the New Hampshire lower court, on written ruling, continued the September 26, 1983 hearing date (34a-35a). Petitioner belatedly received a copy of that notice, incorrectly sent by his former counsel, arriving only a few days before the affirmed September 26, 1983 hearing date (33a). Petitioner received the court-sent certified mail notice after the September 26, 1983 hearing date. (Proof of the return receipt lies, of course, with the Clerk of the lower court.)

Petitioner notes this incorrect address sending by his former counsel was one

of two items so misaddressed; all other communications had been and were correctly addressed.

At this point, even Petitioner's former counsel believed the hearing would be adjourned (42a-46a). As Petitioner's former counsel swears, it was later learned said adjournment was subject to the whim of Respondent (ibid. at 44a).

The court on September 26, 1983 held the hearing without Petitioner. It found Petitioner in contempt for his [inability] failure to pay the private debt declared due Respondent. Petitioner is to be imprisoned for his failure caused by his [temporary] poverty. The words used were:

"Motion to continue denied.
Plaintiff . . . is found in contempt
and ordered to pay attorneys' fees
previosly ordered herein no later
than 10/7/83 or capias to issue for
confinement at Cheshire Cy H of

Corr. [sic] until purged of contempt, but in no event for longer than 180 days. (40a-41a)

Petitioner's former counsel withdrew, again sending his notice of withdrawal to Petitioner's former, and now incorrect, address so that it arrived after 10/7/83. This was the second instance of use of the incorrect address. Petitioner, however, appealed pro se (2a-48a) as he learned of his former counsel's plan to withdraw by telephone on October 5, two days before the capias was to issue unless automatically stayed by the filing of an appeal (ibid at 5a, final ¶).

The appeals court, New Hampshire's highest court (Supreme Court), before briefs were filed, summarily affirmed. No opinion; the decision is not to be reported. It said:

Decision below is summarily affirmed in accordance with rule 25(1)(a). (1a).

As aforestated (above p. 2) the Supreme Court has not sent to Petitioner its affirmance even though Petitioner is listed as the attorney appearing before it (Notice of Appeal 2a-48a at 2a "Moving Party's Counsel in Supreme Court"). Petitioner learned of, and indirectly obtained, a copy of the affirmance. By the affirmance, the contempt ruling making Petitioner liable for imprisonment for private debt, poverty, was summarily affirmed.*

* Petitioner believes it axiomatic that an attorney in private practice may find his economic fortunes favored by a single telephone call or letter. When such fortunes are so favored, Petitioner would heed "the law of the case" and pay Respondent, even though he believes/knows the ruling erroneous.

The New Hampshire Supreme Court Rule

25(1)(a) permits summary affirmance

. . . when (a) no substantial question of law is presented and the supreme court does not disagree with the result below

(Petitioner noting under subsection (5) thereof that the case cannot be used as precedent) (52a). This means New Hampshire's highest court believes imprisonment for private debt is correct, at least as far as Petitioner is concerned. This affirmance disregards, I respectfully submit, the matter of Due Process as aforesaid including courtesy, as well as Full Faith & Credit, to a sister sovereign state's court pre-scheduled hearing.

There are substantial questions of law presented even though the New Hampshire Supreme Court may agree with use of the contempt process to secure payment of a

private debt.

First though, the background of how Petitioner came to be ordered to pay Respondent money.

Background of the Case

Petitioner, using his former counsel, local New Hampshire attorneys, brought an Action in Replevin to recover his stolen automobile, title being in his name and no other. That automobile, through a short chain of title, had been bought by Respondent. (All this would be shown in the Transcript of the May hearing as Petitioner requested but which request was not fulfilled. Notice of Appeal 2a-48a at 3a and 10a.)

At the earlier May 17, 1983 hearing, Petitioner under oath testified that Respondent could not have been harmed econom-

ically by his action, as the person from whom she purchased his automobile would refund her purchase price. This was not denied by Respondent's husband appearing as Respondent's attorney.

The lower court previously said title to a stolen vehicle was "voidable" and not "void". Although error, this is now "the law of the case" and so stands.

At that point Respondent sought and obtained from the lower court an award of attorney's fees from Petitioner for his bringing his Action in Replevin. Petitioner, still relying on his former counsel, appealed and a summary affirmance resulted. As my former counsel did not time-ticket the matter properly, a writ to this Court could not be timely filed and so was withdrawn (17a-19a at ¶C, 18a-19a). The private debt, the award of attorneys' fees,

now stands also as "the law of the case".

At the said May 17, 1983 hearing Petitioner swore he could not then pay the private debt (the attorneys' fees) awarded Respondent. (The footnote on page 8 supra remains applicable throughout.) Petitioner then did not have sufficient funds, and was behind on payment of his taxes. There was neither denial, dispute nor contrary testimony or evidence. Nevertheless, the lower court put down the August date by which payment must be made, failing which a contempt would be found (23a-24a).

About such date, Petitioner noted to the lower court that nothing had changed and payment still could not be made (25a-27a at ¶4, 26a). The lower court scheduled a hearing on the matter (33a). Contrary to the earlier hearing notice of May 2, 1983 (21a-22a) where Petitioner's addresses (in-

correct as to New York) were noted to be used, in this notice Petitioner was not scheduled to receive any notice (33a).

Prior to the very scheduling of this New Hampshire hearing, Petitioner had been scheduled for appearance before the Civil Court, New York County, New York City (where he was to sit as though a Judge). Petitioner so advised the court and his former counsel (28a-30a at ¶4, 29a-30a). Petitioner also commented on the lack of notice-receipt (ibid, ¶5, 30a). In spite of Petitioner's prior court-engagement, the New Hampshire lower court persisted in the date of its choice, September 26, 1983 (34a-35a). This time the court sent a certified mail, return receipt notice to Petitioner of that hearing date (conflicting with the prior-scheduled New York date as above noted). That notice arrived after

the hearing date itself (noted above p. 5 and Notice of Appeal, 1a-48a at 4a).

Therefore, the September 26th hearing was held without Petitioner's ability to be present and of course without his being there. This error was compounded as he understood from his former counsel that the matter would be adjourned (42a-48a).

The lower court found Petitioner should pay the private debt amount previously (erroneously) awarded Respondent via her husband, within a matter of days, failing which the court would send him to jail, by a "capias", for contempt (40a-41a). At this point Petitioner's former counsel withdrew from the matter, ignoring the Code of Professional Responsibility (DR 2-110 and EC 2-32, noted in Notice of Appeal, 2a-48a at 5a and 8a, and 53a-54a). Further,

his written notice not only was sent to Petitioner's incorrect address, but arrived after the appeal time should be filed to stay the capias (ibid).

Thus of the two items Petitioner's former counsel forwarded him to an incorrect address one was the notice of the September 26, 1983 hearing and the other was the withdrawal matter. Somehow all other papers, before and since including accumulating monthly professional fee statements, were sent to Petitioner's (current) correct address.

Reasons for Granting the Writ

Baldly put, the issue is "Does New Hampshire imprison for private debt by the contempt process?" Or, is temporary poverty a crime punishable by prison? Are the days memorialized by Charles Dickens ("Bleak

House" and other writings) a part of a state's judicial system, or is such forbidden by the Due Process protection of our United States Constitution.

Petitioner can find no authority permitting the use of contempt, with imprisonment to follow, if a judgment for private debt is not paid. The situation is unique; possibly because never before has its audaciousness been tried.

Other issues concern the requirement of adequate and proper notice (even consistent with New Hampshire's own statement in a case later discussed) to one viewed there perhaps as an "outsider" as Petitioner is domiciled in New York, and only part-time a New Hampshire resident.

Does the threat of imprisonment for private debt constitute cruel and unusual punishment and by restricting travel into

the state of decree issuance, does this prevent free speech? This has not been addressed before by the courts.

Another reason is to resolve the questions if a notice is incorrectly addressed, if it arrives after a hearing, if it is not even sent to counsel of record, can this (these) still constitute Due Process?

The side issue of when a party's counsel may properly withdraw as attorney from a case is not before the Court, but did affect Petitioner's failure to receive Due Process protection.

If the contempt process may be used for enforcing payment of private debt, then an arbitrary and dangerous precedent to the freedom of all citizens is at hand. It would establish authority to use a court as a collection agency for private debt.

Argument

Due Process, Freedom of Speech, Full Faith & Credit, protection against Cruel and Unusual Punishments, are the constitutional safeguards claimed violated.

There were five primary violations of Due Process:

1. There was a failure to timely send Petitioner a notice of the lower court hearing. The court-sent certified mail return receipt notice came after the hearing was held, and in fact after Petitioner had been assured by his former counsel an adjournment would be granted.

2. There is still existing the failure to send a notice to Petitioner, as his own attorney before New Hampshire's highest court, of its decision. Only by chance did Petitioner learn of the decision and so could timely file this Petition for a Writ.

3. The courts' use of the contempt process to enforce a private debt is incorrect: failure to pay (temporary failure to have the ability to pay) a private debt is not an affront to any court or judicial proceeding, and ignores the realities of financial life (priority of debt payment and ability to pay); it is a denial of Due Process in seeking to deprive Petitioner of property.

4. Due Process was violated in that for Petitioner to avoid an improper imprisonment for private debt under contempt, the Petitioner's freedom of movement is affected, as Petitioner dare not go into the State of New Hampshire.

5. Property is taken as Petitioner cannot go into New Hampshire for his livelihood (he is admitted to the Bar of New Hampshire) thereby depriving him of prop-

erty as well as of liberty.

Imprisonment for debt is a cruel and unusual punishment forbidden by our Constitution.

Further, there was a failure by the New Hampshire lower court (and in effect affirmed by the highest court) to give Full Faith & Credit to the judicial processes of another sovereign state (that of New York) in that Petitioner (acting as though a New York court judge) had informed the New Hampshire court of his prior engagement in the New York court system at the time of the hearing, but which New Hampshire refused to honor.

Petitioner observes the above is compounded by his former counsel withdrawing from his case without the giving of proper, timely notice (noted in Notice of Appeal,

2a-48a at 5a and 8a; 53a-54a). The notice was incorrectly addressed and arrived after the time for the appeal had passed. This plain violation of the Code of Professional Responsibility added to destruction of the basic elements of Due Process that should be given any citizen.

The final judgment of the New Hampshire Supreme Court on summary affirmance has not been sent by the court to Petitioner even though he serves as his own counsel there (2a-48a at 2a). Technically then,

No judgment of a court is due process of law, if rendered . . . without notice to the party.

Scott v. McNeal (1893) 154
U.S. 34, 14 S.Ct. 1108, 38
L.Ed. 896.

But Petitioner is not just relying on that technicality, valid as it may be.

Petitioner avers proper notice of the

hearing itself is required. A notice received post-hearing, as was the certified-mail court-sent notice, is improper.

Due Process . . . implies notice and a hearing.

Orchard v. Alexander (1892)
157 U.S. 372, 383, 15 S.Ct.
372, 39 L.Ed. 737

There must be an "effective opportunity to defend" at a hearing (Goldberg v. Kelly [1970] 397 U.S. 254, 268, 90 S.Ct. 1011, 25 L.Ed. 2d 287). As Petitioner was prior committed to the New York court matter, he could not attend the New Hampshire matter and the hearing going forth without him did not give him this "effective opportunity to defend". It was not notice, arriving post-hearing as it did, nor was the hearing one granted in a meaningful time and in a meaningful manner. (Fuentes v. Shevin, 407 U.S. 67, 80-82, 92 S.Ct. 1983, 32 L.Ed. 2d 556.)

This Court has held a person must have the right to decide -- freely decide -- whether to attend or not attend a hearing; this being a fundamental requisite of due process. (Greene v. Lindsey [1982] 456 U.S. 444, 449, 102 S.Ct. 1874, 72 L.Ed. 2d 249, 254-255.) When the Petitioner is scheduled for a sovereign sister-State court matter, it is not a free decision to not attend the hearing; the court not even granting a week's adjournment as had been sought 36a-39a at ¶6, 38a).

The court Rules in New Hampshire do not speak to the point or manner of notice, but by comparison it is noted that an original writ service

. . . must be made at least 14 days before the sitting of the court to which they are returnable

N.H.Rev.Stat. c. 510 §1.

This indicates, at least, New Hampshire contemplates prior and adequate notice should be given prior to a hearing (a "sitting of the court").

New Hampshire's court supports Petitioner's view. In Cote v. Cote, ___N.H.___, 461 Atl.2d 566 (1983) the high court noted there should be no reliance upon a presumption that a properly addressed communication had been received. How much more pertinent is this when the notice is not "properly addressed". As noted in 25 N.H. Bar Jour. No. 1 (Oct. 1983), reporting on the case,

it is good to see that "presumption" given close scrutiny in the face of the realities of the U. S. postal service.

The going ahead with the hearing, in spite of inadequate notice to Petitioner was in a sense a favor to Respondent. Only if

she agreed to an adjournment would the court have adjourned the hearing, Petitioner's former counsel swears (42a-46a at ¶3, 43a-44a). This runs squarely counter to the words.

Nor can extra-official or casual notice, or a hearing granted as a matter of favor or discretion, be deemed a substantial substitute for the due process of law that the Constitution requires.

Coe v. Armour Fertilizer Works
(1915) 237 U.S. 413, 424, 35
S.Ct. 625, 59 L.Ed. 1027.

If the "discretion" of Respondent were to decide if the hearing was to be held (disregarding the prior engagement of Petitioner in a sovereign sister state's court system), it was hardly "due process".

The notice for the hearing was received post-hearing date, but Petitioner had been advised by his former counsel forwarding it (albeit incorrectly contrary to all

other papers past and since) a few days prior. New York and New Hampshire are some miles apart; from regular "commuting" Petitioner avers one should allow six hours driving time. Thus, the "casual notice" (Coe v. Armour above) is inadequate on this account alone; shown where there were five days' notice to a nonresident in another state; and where it would require four days of constant traveling time to reach the court, giving but one day, and that a Sunday, to make preparations for the trip, without any allowance for accidental delays, this was found insufficient to constitute reasonable notice or due process of law. (Roller v. Holly (1900) 176 U.S. 398, 20 S. Ct. 410, 44 L.Ed. 520.) So too here.

Petitioner has stated to the New Hampshire court he (temporarily, though the "temporary" time is longer than he would

like) cannot pay the award to Respondent. Although the award was erroneous, nevertheless it is the "law of the case". This testimony would appear in the transcript. When an appeal is taken in New Hampshire the procedure is for the appellant (Petitioner here) to note what transcript portions are required (Notice of Appeal 2a-48a at 3a and 10a). Here this was requested but the Supreme Court of New Hampshire did not bother with authorizing this, it preferring to summarily affirm the contempt order on Petitioner, ordering jail for private debt.

That transcript of the May 17, 1983 hearing would have shown the uncontroverted statement of Petitioner as to the debt and his ability to pay at such time. The use of contempt to demand payment to Respondent under such circumstances is improper. There

is "no justification" for its use. McNeil v. Patuxent Institution Director (1972) 407 U.S. 245, 92 S.Ct. 2083, 32 L.Ed. 2d 719. If there is "no justification", then its use, whereby Petitioner would be denied life and liberty for failure to pay a private debt, should be condemned. After all, Petitioner is unable to comply, he has explained his current situation to the court. That is sufficient. McPaul v. United States (1960) 364 U.S. 372, 378, 81 S.Ct. 138, 5 L.Ed. 2d 136.

By threatening, or holding over Petitioner's head the fact of jail if he is in New Hampshire while the private debt is unpaid, his right to travel is affected. This "right to travel" has been held part of the "liberty" which requires Due Process before it can be extinguished. Although this concept was held in relation to trips

abroad, surely it is all the more pertinent within our United States. United States v. Laub (1966) 385 U.S. 475, 87 S.Ct. 574, 17 L.Ed. 2d 526. Petitioner's freedom of movement is restricted. If Petitioner cannot travel to New Hampshire, he cannot speak in New Hampshire, thereby denying him Freedom of Speech.

Petitioner avers that the vagaries of notice, or its lack, or its lateness, show an absence of Due Process. Even though there is no hard and fast rule as to what is due process (Brock v. North Carolina [1952] 344 U.S. 424, 427, 73 S.Ct. 349, 97 L.Ed. 456) Petitioner avers there is enough to show its denial here. If an alien, as well as a citizen, is entitled to the protection of the Fifth Amendment (United States v. Pink [1942] 315 U.S. 203, 228, 62 S.Ct. 552, 86 L.Ed. 796) so with one

a non-domiciliary of New Hampshire (an "alien", an "outsider") should that protection extend. Petitioner avers Respondent cannot show a single instance of a like situation befalling a full-time resident; particularly mixed-up notices, imprisonment for private debt by the contempt process, or the failure to send a notice of the highest court's decision to the named appellant's attorney.

As with the Fifth Amendment, so the Fourteenth, which seeks to preserve fundamental rights (Butler v. Perry [1915] 240 U.S. 328, 337, 36 S.Ct. 288, 60 L.Ed. 672).

Imprisonment for debt is repugnant to our system. That principle was to prevent using it for the collection of private debts (Freeman v. United States [1910] 217 U.S. 539, 544, 30 S.Ct. 592, 54 L.Ed. 874).

As with the Magna Charta to the present,
the intention is

to secure the individual from the arbitrary exercise of the powers of the government, unrestrained by the established principles of private rights and distributive justice.

Bank of Columbia v. Okely (1919)
4 Wheat 235, 244, 4 L.Ed. 559

In learning what are proper elements for the court to declare a Contempt, a return to Blackstone is made. He notes:

The contempts, that are thus punished, are either direct, which openly insult or resist the powers of the courts, or the persons of the judges who preside there; or else are consequential, which (without such gross insolence or direct opposition) plainly tend to create a universal disregard of their authority.

(Underlining in original;
Chase's Blackstone [4th ed.
1938] pp. 992-993)

Petitioner's nonpayment of a private debt
is not an open insult to the court surely,

nor does it disregard authority as he has testified he did not have the funds required.

In essence: is financial impoverishment an "insult" to the court? It seems the lower court has painted itself into a box; it should never, never have made the determination it did, and having made it, caused a compounding by reaffirming it after Petitioner testified to an inability to pay which was not denied nor refuted.

The power of the court is limited to the possible. The court cannot hold, say, a Governor in contempt for his inability to balance a state budget, or the Selectmen of a Town in contempt for their inability to keep the Town from debt. Nor can the court by its power mesmerize money in Petitioner's control by which he can pay a private debt. If it could, this would be

marvelous, equal to Merlin or to a printing press economy by which some have sought to resolve monetary problems. Such logic flees in despair.

Although there was no reason to give Respondent attorney's fees as no law or case so allows, and as under no circumstances would Respondent have been harmed financially, such were awarded and Petitioner's former counsel did not make his case. Thus, this is the "law of the case"; it is a "judgment" that is to be paid. New Hampshire has a provision for "Judgment, entry of" in its law (Rev. Stat. c. 491). That should have been used.

For the moment, arguendo, assume "contempt" is proper for the collection of a private debt. In such instance, the order must be clear as to what is involved. Is the debt to be paid, for example, before a

a citizen's taxes?

The judicial contempt power is a potent weapon. When it is founded upon a decree too vague to be understood, it can be a deadly one. Congress responded to that danger by requiring that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid.

Int'l Longshoremen v. Marine Trade Ass'n (1967) 389 U.S. 64, 76, 88 S.Ct. 201, 19 L.Ed. 2d 236

The lower court's order (as affirmed and so this Petition for a Writ) does not search for assets (cf. N.H. Rev. Stat. c. 498 §8). It said in effect, pay, and we do not care where, from whom, or how you get the money (this in spite of testimony that at the moment such is not possible). The script runs badly from there on. It suggests:

1. Disregard what should be a prior obligation to bring up tax

payments to a current status.

(This was done in early October 1983 actually -- by fortunate chance -- just prior to an Internal Revenue Service of a Notice of Levy received October 11, 1983.)

2. Disregard the effort to secure the money by working. (Spending time here is not client-paying.)

3. Just get the money, no matter how, be that by legal or illegal means (viz. theft, embezzlement; shades of "collection-men" on television).

4. Declare bankruptcy (but that would hurt innocent people for surely if done Petitioner would not exempt other creditors -- that would defy logic).

The use of contempt should be reason-

able.

When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

Bates v. Little Rock (1959)
361 U.S. 516, 525, 80 S.Ct.
412, 4 L.Ed. 2d 480

Although no "government purpose [was] asserted as its justification" nevertheless the contempt is a Sword of Damocles. The consequences, were it to be continued, are very practical, and hardly in a "reasonable relationship" to any positive gain. If Petitioner were actually jailed (this would assume Petitioner had the funds and just plain refused to pay; and of course assumes only arguendo the contempt process was proper):

1. The State of New Hampshire

would pay (figuring \$73.41 per day) over \$13,000, for Petitioner's room and board; a taking of Petitioner's life.

2. The Petitioner's livelihood (he being a single practitioner) would be destroyed, a taking of his property.

3. Petitioner not earning money for six months would not be liable for taxes and thereby reduce the government input (a further cost to #1); life and property taken.

4. Petitioner might well be a public charge upon release.

5. Respondent would never receive her "law of the case" money.

6. Petitioner might then file for bankruptcy thereby injuring others who would have otherwise been

paid (no one has ever lost money on Petitioner).

7. Respondent would have the childish temper tantrum satisfaction of making Petitioner a jail-bird.

Does that make sense? Was it Due Process to make that scenario? Was it Due Process to script the above by not giving timely notice, and using the Contempt process for private debt?

Petitioner avers imprisonment for poverty (temporary though Petitioner avers it may be -- footnote on page 8 above) is "cruel and unusual punishment" prohibited by Amendment VIII of our Constitution (50a). It denies Petitioner movement into New Hampshire meaning he cannot go there to speak and so his Freedom of Speech per Amendment I is denied (49a).

When one views television one can understand how some can believe all New York lawyers are millionaires, much as some believed the streets were paved in gold. This is not so. Petitioner is not shy on honors, appearing as he does in "Who's Who in American Law" from the first volume on, having written two law books (flat fee, no royalties), and over fifty law articles and book reviews; he has served in a New Hampshire moot court hearing; is on the Board of Advisors for a New Hampshire law publication; he is an arbitrator for the American Arbitration Association; a lecturer on laws pertaining to daily living; and as noted serves the Civil Court, New York County, City of New York as though a Judge. In some instances this last is without pay and in others an honorarium only. (Respectfully, Judges are

not known for their financial income and your Petitioner is correctly entitled to the appellation "Judge".) Petitioner sits as Chairperson of a Panel of Arbitrators for the aforementioned Civil Court. The Rules (Part 28 of the Rules of the Chief Judge, 22 NYCRR 28.1 et seq.) provide for "Mandatory submission of actions to arbitrators (§28.2) of matters involving \$6,000. or less when before that Civil Court" (ibid.). That Civil Court's jurisdiction was \$10,000. (N.Y. Civil Court Act §201) until recently, when it was raised. The scheduling of the arbitration hearings is entrusted to the Chairperson (§28.6) which Petitioner did prior to receipt of the Superior Court hearing notice for September 26, 1983, forwarded by his former counsel to an incorrect address.

Therefore, the Civil Court made a prior

demand upon Petitioner for an appearance. As a citizen, a lawyer, and a Judge, Petitioner adhered to the first court call. Was that wrong? Should not the New Hampshire court have given Full Faith and Credit to the "judicial proceedings of [the] other State" (Article IV, Const. 49a) as well as just being plain courteous? Assume the reverse: that Petitioner had been first called to the New Hampshire court and the Civil Court in New York refused to honor that, how would the New Hampshire court react?

Conclusion

New Hampshire cannot afford the "luxury" of its act. If it denies Due Process, as aforementioned, to Petitioner as an "outsider", next it may do it to a minority full-time citizen-resident, one not of

Yankee or French-Canadian heritage.

In this great country of ours, New Hampshire's state motto, "Live Free or Die" is a motto worth contemplating. To deny equality, justice, is to deny freedom. The court had the choice in the palm of its judicial hand. It turned its judicial thumb down on the living of free men. That was hardly Due Process. Its misuse of contempt is a cruel and unusual punishment.

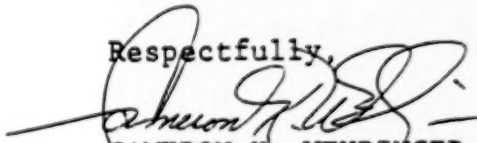
The court ignored a sister state's prior court demands on an individual. That was not Full Faith and Credit.

The court prevents Petitioner's appearance in New Hampshire, thereby denying freedom of travel and with it Free Speech, the ability to speak in a public or private place in one sovereign state of the Union; that is hardly consonant with "Live Free

. . . "

The Writ, both to establish principles of law and to correct errors, is worthy of being granted.

Respectfully,

A handwritten signature in dark ink, appearing to read "Cameron K. Wehringer", written over the printed name.

CAMERON K. WEHRINGER
Attorney for Petitioner,
Pro se

December 28, 1983

APPENDIX

Final Judgment of the Supreme Court of
the State of New Hampshire, dated
November 30, 1983

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 83-414, Cameron K. Wehringer
v. Kathy Gardner

the court upon November 30, 1983 made the
following order:

Decision below is summarily affirmed
in accordance with rule 25 (1) (a).

Ralph H. Wood,

Clerk

Notice of Appeal to the Supreme Court of
the State of New Hampshire, and Supporting
Papers

CAMERON K. WEHRINGER : APPEAL from
: Superior Court
VS. : Cheshire County
:
KATHY GARDNER : Date of Clerk's
: Notice:
: September 26, 1983

Trial Judge: Linda S. Dalianis
Docket No. 81-E-127

Trial Counsel below:

Plaintiff:

Wendell, Clark & Solomon
50 Bridge Street
Manchester, New Hampshire 03101
[603] 625-4100

Defendant:

Eric Gardner, Esq.
55 Court Street
Keene, New Hampshire 03431
[603] 357-1241

Moving Party's : Cameron K. Wehringer,
Counsel in Supreme : Esq.
Court: 160 East 56th Street
New York, N.Y. 10022
[212] 486-6228

Opposing Party's
Counsel in Supreme
Court:

Eric Gardner, Esq.
55 Court Street
Keene, New Hampshire
03431
[603] 357-1241

Oral argument waived by moving party and
by opposing party
yes
yes

Counsel probably will not stipulate within
ten days from the date of this notice [of]
appeal concerning the facts or the issues.

The Court Reporter is requested to tran-
scribe the entire hearing held

May 17, 1983 in the Superior Court,
Keene, New Hampshire and

September 26, 1983 held in the
Superior Court, Manchester, New Hampshire
both before Hon. Linda S. Dalianis, Judge.

Brief Description of Case and Result:

The court had awarded defendant attor-
ney's fees setting forth a date by
which to be paid;

At hearing on May 17, 1983 plaintiff

under oath stated he did not have the money to pay same; this was not refuted.

Court then issued order that said attorney's fees were to be paid by a later stated date; and this order was misdirected by plaintiff's then-counsel to a former address occasioning such delay that in that interim plaintiff, acting as a Judge for the Civil Court of the City of New York, New York County committed himself to a hearing on such later stated date; When this was pointed out to court, it confirmed the conflicting hearing date, with its order sent to plaintiff and arriving two days after the hearing date;

Plaintiff was not present, but had requested his then counsel to seek a

continuance which on the Friday previous to the hearing said counsel orally advised plaintiff would be one of two alternative dates;

However, at said later stated hearing date, the court refused the continuance, and ordered plaintiff to pay the amount (to which he had sworn he had not funds and did affirm just prior to the hearing) by October 7, 1983 failing which he would be in contempt of court and be placed in Cheshire County prison for not more than 180 days (imprisonment for private debt).

As of exactly two days prior to October 7, 1983 plaintiff learned that his counsel had decided to withdraw, but as of this date has not received said notice in writing.

No statute is presently known, but research will be made.

Specific Questions to be Raised on Appeal:

1. What is "Due Process" under the U. S. Constitution as to service of a notice of a hearing
2. What is the effect of a prior obtained (ordered) other-court engagement as to the seeking of an adjourned date
3. Should a court use the contempt proceeding to enforce payment of a debt to a party in a legal action (other than in matrimonial matters)
4. Does New Hampshire condone imprisonment for private debt

List of cases supporting moving party's position:

Upon the short notice of withdrawal of plaintiff's counsel (and that being

only oral) plaintiff (pro se) has not gathered together such cases, but will research.

Copies of the following documents are annexed as an Exhibit and are on file in the Clerk's office (thus one copy only here sent)

1. Order: September 17, 1982
2. Defendant's motion for contempt (apparently March 18, 1983)
3. Plaintiff's objection to motion (apparently March 30, 1983)
4. Order and accompanying letter (with incorrect plaintiff's address) of May 2, 1983
5. Order and accompanying letter of May 23, 1983
6. Plaintiff's request for adjournment of August 24, 1983
7. Plaintiff's affidavit of 19 September 1983 with exhibit showing

misaddressed order by plaintiff's
then-counsel

8. Order as stated in a letter of
September 2, 1983
9. Order and accompanying letter of
September 22, 1983
10. Plaintiff's motion for reconsider-
ation and for continuance
11. Order and accompanying letter of
September 26, 1983
12. Affidavit of plaintiff's then-
counsel of September 28, 1983
13. Exception on behalf of plaintiff
by his then-counsel dated Sep-
tember 28, 1983.

As above stated, due to the extreme short-
ness of time caused by the withdrawal of
plaintiff's then counsel (as only orally
advised), the pertinent text of constitu-
tions, statutes, and other items as stated

in the Supreme Court Rules is physically impossible to produce.

/S/

Cameron K. Wehringer
160 East 56th Street
New York, N.Y. 10022
(212) 486-6228

Plaintiff's Request for Transcript

Transcript Information

Appeal from Superior Court, Cheshire County

Trial Judge: Hon. Linda S. Dalianas

Court Reporters: (name not known)

Reporters Estimate ____ No. of pages ____ cost
____ No. of date to prepare
____ no. of dates of hearing
ing

Docket No. Below: 81-E-127

Dates of hearing: May 17, 1983 and September 28, 1983

Moving Party: Plaintiff

Counsel for moving party: Cameron K.

Wehringer, Esq.

1. I have requested an estimate for a transcript of the two hearing proceedings.

Number of copies required: one original and two copies.

11a

Cameron K. Wehringer
160 East 56th Street
New York, N.Y. 10022

(1)

Order of the Superior Court, Cheshire
County, dated September 17, 1982

Office of

CLERK OF SUPERIOR COURT

Cheshire County

September 17, 1982

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

Please be advised that on September 16,
1982, Linda Dalianis, P.J. made the follow-
ing order in the above captioned case:

"Motion to Compel Compliance Granted.
Total attorney's fees and costs in the
amount of \$2235.50 are ordered to be paid
within 90 days of this order."

Copies to: Grenville Clark, III, Esq.
Eric Gardner, Esq.

Defendant's Motion for Contempt

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.
EQUITY NO. 81-E-127

SUPERIOR COURT
JANUARY TERM 1983

Cameron K. Wehringer

vs.

Kathy Gardner

MOTION FOR CONTEMPT AND FURTHER ASSESSMENT
OF COSTS AND FEES

NOW COMES the defendant, Kathy Gardner,
by her attorney, and says as follows:

1. On September 16, 1982 this court
ordered as follows:

"Motion to Compel Compliance

Granted. Total attorney's fees and
costs in the amount of \$2235.50 are
ordered to be paid within 90 days
of this order."

2. That order followed a lengthy course

of frivolous, unfounded litigation instituted by the plaintiff in state court which had resulted in, among other things, two summary dismissals of separate appeals by the plaintiff to the New Hampshire Supreme Court.

3. To date, plaintiff has not complied with the court order, but instead, on December 15, 1982, plaintiff filed a petition for writ of certiorari with the United States Supreme Court. That petition too, has been summarily dismissed.

4. Plaintiff is a member of the New Hampshire Bar, and is and has prosecuted this entire litigation in an absolutely outrageous manner, completely contemptuous of this court and all other courts involved, and at all times has behaved with the utmost bad faith and frivolity.

5. At each stage, defendant has been

forced to invest substantial legal time and effort to deal with the plaintiff's ongoing misuse and abuse of the entire legal process.

6. The plaintiff has evidenced, by his conduct, that he absolutely will not voluntarily comply with any court order in this case, and therefore, only the most extreme of remedies will terminate this litigation.

WHEREFORE, the defendant prays:

a. That an order of notice issue forthwith at the direction of this court adjudging the plaintiff to be in contempt of this court's order of September 16, 1982.

b. That the court order the plaintiff to appear personally, at an early time and date certain, to show cause why he should not be committed forthwith to the house of correction.

c. That the court assess against plaintiff all fees, costs and interest accrued since September 16, 1982, and such further fees, costs and interest as shall accrue between the filing of this motion and date of actual payment by plaintiff.

d. For such further relief as may be just.

Respectfully submitted,

Kathy Gardner
by her attorney,

/S/ ERIC R. GARDNER
Eric R. Gardner

(3)

Plaintiff's Attorney's Objection to Motion
for Contempt

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

JANUARY TERM, 1983

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

OBJECTION TO MOTION FOR CONTEMPT AND
FURTHER ASSESSMENT OF COSTS AND FEES

The plaintiff in the above-entitled action, Cameron K. Wehringer, objects to the Motion for Contempt and Further Assessment of Costs and Fees dated March 18, 1983 and filed on or about March 21, 1983. In support of this objection, the plaintiff states as follows:

1. The plaintiff admits the allegations of paragraph 1 of the motion.
2. The plaintiff denies the allega-

tions of paragraph 2.

3. The plaintiff admits the allegations of paragraph 3.

4. The plaintiff denies the allegations of paragraph 4.

5. The plaintiff denies the allegations of paragraph 5.

6. The plaintiff denies the allegations of paragraph 6.

AND IN FURTHER ANSWER, the plaintiff states as follows:

A. Until the petition for writ of certiorari was dismissed by the United States Supreme Court, there was in effect no final order compelling him to pay the amount of \$2,235.50.

B. The plaintiff has no funds at present with which to satisfy the Court order.

C. No further fees and costs

would have been accrued by the defendant in this action since September 16, 1982 except possibly in connection with responding to the petition for a Writ of Certiorari in the United States Supreme Court. The United States Supreme Court has sole jurisdiction over the assessment of attorney's fees and costs in that proceeding, and has not made any assessment against the plaintiff.

WHEREFORE, the plaintiff prays that the Motion for Contempt be denied and that no further assessment of costs and fees be made.

Respectfully submitted,

Cameron K. Wehringer
By his attorneys,
WENDELL, CLARK & SOLOMON

By /S/ Grenville Clark, III
Grenville Clark, III

CERTIFICATION

I hereby certify that a copy of the foregoing Objection was forwarded this 30th day of March, 1983 to Eric R. Gardner, Esq., opposing counsel.

/S/ Grenville Clark
Grenville Clark, III

21a

(4)

Notice of Hearing and Order dated
May 2, 1983

Office of
CLERK OF SUPERIOR COURT
CHESHIRE COUNTY

May 2, 1983

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

Enclosed please find a copy of the
Court order dated May 2, 1983, in the above
captioned case.

STILLMAN D. ROGERS
Clerk

COPIES TO: Cameron K. Wehringer, 24 W.
43rd St. N.Y. N.Y., RFD,
Washington, N.H.
Grenville Clark, III
Eric Gardner, Esq.

PLEASE NOTE: THIS IS THE ONLY NOTICE THAT
YOU WILL RECEIVE OF HEARING
SCHEDULED FOR MAY 17, 1983
AT 8:45 a.m.

81-E-127
Docket No.

ORDER ON DOCUMENT- Motion for
Contempt and Further Assess-
ment of Costs and Fees

Cameron K. Wehringer v. Kathy Gardner

Hearing continued to May 17, 1983 at
8:45 a.m. for further notice to Plaintiff
which shall be made by first class U.S.
Mail, postage prepaid to Plaintiff's last
known address. Plaintiff's failure to
appear at continued hearing shall result
in a capias being issued for his arrest.

S/ Linda S. Dalianis
Linda S. Dalianis, P.J.
5-2-83

Date

Signature
Presiding Justice

(5)

Covering letter and Order of the Superior
Court, dated May 19, 1983

Office of
CLERK OF SUPERIOR COURT
Cheshire County

May 23, 1983

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

Enclosed please find a copy of the
Court order dated May 19, 1983, in the
above captioned case.

/S/ STILLMAN D. ROGERS
Clerk

COPIES TO: Grenville Clark, III, Esq.
Cameron K. Wehringer
Eric Gardner, Esq.

Docket No.

ORDER ON DOCUMENT NO. _____

After hearing on 5/18/83, the following order is entered: plaintiff shall pay the attorneys' fees previously ordered no later than August 31, 1983 or he shall appear to show cause, if any, why he should not be held in contempt.

/S/ L. S. Dalianis

P J

5-19-83

Date

Signature
Presiding Justice

(6)

Plaintiff's Request for Adjournment

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

REQUEST FOR ADJOURNMENT

The plaintiff in the above-entitled action, Cameron K. Wehringer, through his attorneys, Wendell, Clark & Solomon is in receipt of the court's order of May 19, 1983 and requests an adjournment therefrom the date of August 31, 1983. In support, plaintiff states as follows:

1. The attorneys for plaintiff advised plaintiff that he need not appear on August 31, 1983; but as plaintiff reads the order "he shall appear" denotes an appear-

ance, however, without time stated.

2. The plaintiff repeats and reiterates those reasons for non payment he gave under oath on May 18, 1983 as though such was repeated here, word for word.

3. The plaintiff's automobile literally stopped functioning on the highway, and a replacement automobile was stolen (and reported to the police department on August 4, 1983).

4. In addition thereto, plaintiff can see no change in the financial condition heretofore sworn to on May 18, 1983 for at least six (6) months, thereby causing all parties, and the court, only time, effort, and trouble in scheduling hearings and attending the same.

5. Therefore, a day and time sometime in the Spring 1984 is suggested, respectfully, as a more appropriate time for such

order; unless the court would strike the order in the interests of greater justice and equity for the reasons sworn to on May 18, 1983.

WHEREFORE, the plaintiff prays that the request for adjournment until a date in Spring 1984 be granted; without costs and fees to any party.

Respectfully submitted,

/S/

Cameron K. Wehringer
Plaintiff

CERTIFICATION

I hereby certify that a copy of the foregoing Request was forwarded this 24th day of August 1983 to Wendell, Clark & Solomon, attorneys for plaintiff, and to Eric R. Gardner, Esq., opposing counsel.

Cameron K. Wehringer

(7)

Plaintiff's Affidavit of Engagement
sworn to September 19, 1983

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

#81-E-127

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

CAMERON K. WEHRINGER, being duly
sworn, deposes:

1. In this morning's mail, a notice setting down a hearing for one week from today, that is, on September 26, 1983 was received. Said notice had been forwarded, my attorneys for some reason using an old address. (See attached).

2. Under date of 24 August 1983 an adjournment was requested and a copy was

sent to Eric R. Gardner, Esq., opposing counsel (his letter of August 30, 1983 denies same; possibly the mails are as bad as my ¶1 relates).

3. For the reasons stated in my request for adjournment this scheduled hearing is requested adjourned. As earlier noted I am without transportation, literally. If Eric Gardner, Esq. is agreeable to reimbursing for either car rental or airplane travel, this would eliminate or modify such reason I note. Otherwise, it is an expenditure of approximately one hundred twenty to two hundred dollars (depending on mode of transportation).

4. However, further, your deponent has scheduled cases to be heard on behalf of the Civil Court, City of New York, on his position as Chairman of an Arbitration Panel authorized and empowered to dispose

of cases with a monetary value up to six thousand dollars. Thus, a conflict arises, with the prior scheduling of self, the other panel members, the attorneys for plaintiff and defendant and the clients of said attorneys.

5. In passing, I note that I have not received an official court notice, not that this is vital in this instance, but merely to re-enforce the statement as to the utterly deplorable state of mail delivery.

WHEREFORE, deponent-plaintiff prays, as stated on August 24, 1983, that his request for adjournment until a date in Spring 1984 be granted; without costs and fees to any party.

Respectfully submitted,

/S/

Cameron K. Wehringer
Plaintiff

Subscribed and sworn to before
me this 19th day of September
1983.

/S/

Notary Stamp

CERTIFICATION

I hereby certify that a copy of the
foregoing affidavit was forwarded this
19th day of September 1983 to Wendell,
Clark & Solomon, attorneys for plaintiff,
and to Eric R. Gardner, Esq., 55 Court
Street, Keene, New Hampshire 03431,
opposing counsel.

Cameron K. Wehringer

/ENDELL, CLARK & SOLOMON

ATTORNEYS AT LAW

MANHATTEN, NEW YORK 10017

DATED
SEP-6 '83

Cameron K. Wehringer
25 West 43rd Street
New York, NY 10036

REC'D First
Mail Monday
9-19-83

WEH 25 1115343 9/15/83

WEHRINGER
150 F 56 ST 2 FL
NEW YORK NY 10022

Envelope showing incorrect addressing of
notice forwarding

Notice of Hearing of September 2, 1983

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

Cheshire, s.s.

September 2, 1983

NOTICE OF HEARING

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

A hearing in the above matter on Show
Cause Why Plaintiff Should Not Be Held in
Contempt is scheduled at the Hillsborough
County Court House at Manchester, N.H. on
Monday, September 26, 1983 at 9:00 AM.

/S/ STILLMAN D. ROGERS

Stillman D. Rogers, Clerk

COPIES TO: Grenville Clark III, Esquire
Eric Gardner, Esquire
Clerk, Hillsborough County
Superior Court

(9)

Order of Superior Court denying Request
for Adjournment, with Notice of Show
Cause Hearing, dated September 22, 1983

Office of
CLERK OF SUPERIOR COURT
Cheshire County

September 22, 1983

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

Enclosed please find a copy of the
Court order dated September 22, 1983, in
the above captioned case.

/S/ STILLMAN D. ROGERS
Clerk

COPIES TO: Grenville Clark, Esq.
Cameron K. Wehringer
Eric Gardner, Esq.

81-E-127
Docket No.

ORDER ON DOCUMENT NO. _____

Cameron K. Wehringer v. Kathy Gardner

Plaintiff's Request for Adjournment
is denied. Show Cause hearing will be held
on September 26, 1983 at 9:00 a.m. at the
Hillsborough County Superior Court in
Manchester as scheduled. Failure of the
plaintiff to appear shall result in a
capias being issued for his arrest.

September 22, 1983

/s/ Linda S. Dalianis
Linda S. Dalianis, P.J.

Date

Signature
Presiding Justice

(10)

Plaintiff's Motion for Reconsideration

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SEPTEMBER TERM, 1983

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

#81-E-127

MOTION FOR RECONSIDERATION
AND FOR CONTINUANCE

The plaintiff in the above-entitled, Cameron K. Wehringer, respectfully moves for reconsideration of the Court's order of September 22, 1983, denying his request for adjournment, and moves further that the show cause hearing scheduled for September 26, 1983, be continued for one week to October 3, 1983. As grounds for this motion, the plaintiff states as follows:

1. On August 24, 1983, the plaintiff filed a request for adjournment of a show cause hearing he thought was scheduled for August 31, 1983. In that request, he requested adjournment for a period of six months.

2. Although no show cause hearing had actually been scheduled for August 31, the Court did, by notice dated September 2, schedule such a hearing for September 26.

3. Plaintiff's counsel promptly forwarded the notice to plaintiff, but through accident, mistake and misfortune, including the misaddressing the notice to the plaintiff's old address and apparent delays in postal service, the plaintiff did not receive actual notice of the September 26 hearing until September 19.

4. At the time the plaintiff received

actual notice on September 19, he had already been scheduled to serve upon a panel of arbitrators to hear a case in New York City commencing on September 26, the date scheduled for this Court's show cause hearing.

5. Plaintiff's appearance in this Court on September 26, will cause a grave inconvenience to the other arbitrators, the parties and the counsel involved in the arbitration.

6. The plaintiff is available to appear before this Court on Monday, October 3 or October 17, or such other time and date (other than September 26) as the Court may order.

WHEREFORE, the plaintiff prays that the Court reconsider its denial of the plaintiff's request for adjournment, and that the hearing scheduled for September 26

be rescheduled for October 3, October 17
or such other date as the Court may order.

Respectfully submitted,
Cameron K. Wehringer
By his attorneys,
WENDELL, CLARK, & SOLOMON

By: _____
Grenville Clark, III

(11)

Order of Superior Court dated September
26, 1983 (appealed from to the New Hamp-
shire Supreme Court)

Office of
CLERK OF SUPERIOR COURT
Cheshire County

September 26, 1983

Docket # 81-E-127

Cameron K. Wehringer vs. Kathy Gardner

Enclosed please find a copy of the
Court order dated September 26, 1983, in
the above captioned case.

/S/ STILLMAN D. ROGERS
Clerk

COPIES TO: Grenville Clark, III, Esq.
Eric Gardner, Esq.
Cameron K. Wehringer

Docket No.ORDER ON DOCUMENT NO.

Motion to continue denied. Plaintiff having failed to appear to show cause (although his counsel was present and argued strenuously on his behalf) is found in contempt and ordered to pay attorneys' fees previously ordered herein no later than 10/7/83 or capias to issue for confinement at Cheshire Cty H. of Corr. until purged of contempt, but in no event for longer than 180 days.

/S/ L. S. Dalianis
PJ
9-26-83

Date

Signature
Presiding Justice

(12)

Plaintiff's counsel's affidavit as to ex-
pectation of adjournment

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SEPTEMBER TERM, 1983

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

#81-E-127

AFFIDAVIT

My name is Grenville Clark III, and
upon oath, I depose and say as follows,
based upon my personal knowledge:

1. I am an attorney at law admitted
to practice in New Hampshire in 1971. I
have been representing the plaintiff in
this action, Cameron K. Wehringer, in con-
nection with all the State court proceedings
from its inception to the present.

2. On September 23, 1983 at about noon, I filed a "Motion for Reconsideration and for Continuance." I also telephoned Mr. Gardner's office to inform him of the filing, and left a message with his secretary about the contents of the Motion. At the time of filing, I asked Clerk John Safford to see if the Motion could be acted on by Justice Dalianis and to call myself and Attorney Gardner later in the afternoon with the Court's ruling so we might avoid a trip by the plaintiff from New York City and Attorney Gardner from Keene in the event a continuance was granted.

3. Having received no word either way from the Court, I called for Mr. Safford at about 4:30 p.m. Because he was unavailable, I spoke with Deputy Clerk Bill McGraw. He stated that he was familiar with the matter, that Justice Dalianis had not

yet made a ruling, that the Clerk's Office was attempting to reach Attorney Gardner to determine what alternate date would be agreeable to him, and that he expected that Judge Dalianis would grant the Motion once an alternate date was determined. I believe I asked Mr. McGraw whether this meant that the hearing scheduled for Monday, September 26 was off, and I believe that he replied "I presume so." I was never told that the granting of the continuance was subject to assent by Mr. Gardner to the continuance itself as distinguished from merely finding out what date was convenient to him. I also advised Mr. McGraw that I would remain in my office until well after 5:00 p.m. in the event that the Clerk's Office was able to contact Attorney Gardner's office concerning the alternate date.

4. I thereupon telephoned my client in New York City and relayed the information I had received from Mr. McGraw. My client concluded that he would not have to appear in Court in Manchester on Monday, September 26, and I did not indicate otherwise to him.

5. Having heard nothing further concerning the setting of a new date, I attended the scheduled hearing on Monday, September 26. My client was not present. During the course of the hearing in chambers before Justice Dalianis, the Court stated that it had been inclined to grant the Motion for Continuance only if Attorney Gardner was willing to assent to it. Thereupon I related to the Court the facts concerning my communications with Deputy Clerk McGraw as set forth above.

/S/

Grenville Clark, III

Signed and sworn to before me this
28th day of September, 1981.

S/ Carole P. Brikow
Notary Public

(13)
Plaintiff's Exception

THE STATE OF NEW HAMPSHIRE

CHESHIRE, SS.

SEPTEMBER TERM, 1983

SUPERIOR COURT

Cameron K. Wehringer

v.

Kathy Gardner

#81-E-127

EXCEPTION

The plaintiff in the above action,
Cameron K. Wehringer, respectfully excepts
to the Court's Order of September 26, 1983
for the reasons, among others, set forth
in the accompanying affidavit.

Respectfully submitted,
Cameron K. Wehringer
By his attorneys,
WENDELL, CLARK & SOLOMON

By /S/ Grenville Clark
Grenville Clark, III

CERTIFICATION

I hereby certify that a copy of the foregoing Exception was mailed this 28th day of September, 1983 to Eric R. Gardner, Esq., opposing counsel.

/S/ Grenville Clark
Grenville Clark, III

Constitution of the United States of
America

ARTICLE IV

Section 1

Full faith and credit shall be given in each State to the public acts, records, and judicial proceedings of every other State. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

AMENDMENT VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT XIV

1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2.

New Hampshire Supreme Court Rule 25

(1) The supreme court may at any time, on its own motion and without notice or on such notice as it may order, dispose of a case summarily. An order of summary affirmance under this rule may be entered when (a) no substantial question of law is presented and the supreme court does not disagree with the result below, or (b) . . .

(5) Cases summarily disposed of under this rule shall not be regarded as establishing precedent or be cited as authority.

Code of Professional Responsibility

DR 2-110 Withdrawal from Employment

. . .

(2) In any event, a lawyer shall not withdraw from employment until he has taken reasonable steps to avoid foreseeable prejudice to the rights of his client, including giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

EC 2-32 A decision by a lawyer to withdraw should be made only on the basis of compelling circumstances. . . . A lawyer should not withdraw without considering carefully and endeavoring to minimize the possible adverse effect on the rights of his client

and the possibility of prejudice to his client as a result of his withdrawal.

Even when he justifiably withdraws, a lawyer should protect the welfare of his client by giving due notice of his withdrawal, suggesting employment of other counsel . . . and otherwise endeavoring to minimize the possibility of harm. . . .